

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
DEARBORN RIVER BASIN (41U)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Arthur D. Thompson; Margie A. Thompson

**CASE 41U-0112-R-2023**

41U 97128-00

41U 97131-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Claim 41U 97128-00 was decreed with the following DNRC issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

2. Claim 41U 97131-00 was decreed with the following point of diversion and means of diversion:

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	21	16N	5W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 1 TO JULY 1					
<b>Diversion Means:</b>	HEADGATE					

and the following DNRC point of diversion and means of diversion issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. No objections were filed.

### PRINCIPLE OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

### CONCLUSIONS OF LAW

1. The issue remark decreed on claim 41U 97031-00 is not supported by evidence sufficient to overcome the prima facie status afforded the point of diversion of the claim.

2. The issue remarks decreed on claims 41U 97128-00 and 41U 97131-00 provided notice of changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. As no objections were filed, no further proceedings are required.

### RECOMMENDATION

1. The issue remarks should be removed from the claims in this Case with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 97128-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MARGIE A THOMPSON  
7950 BIRDTAIL RD  
WOLF CREEK, MT 59648  
  
ARTHUR D THOMPSON  
7950 BIRDTAIL RD  
WOLF CREEK, MT 59648 8602

**Priority Date:** SEPTEMBER 1, 1971

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 2.23 CFS

**Volume:** 200.00 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 160.00

**Source Name:** LONG COULEE

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	2	17N	4W	LEWIS AND CLARK

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** DAM

PUMP SITE WHICH IS THE SECONDARY POINT OF DIVERSION IS LOCATED ON FLAT CREEK AT SESENE SEC 2 TWP 17N RGE 04W LEWIS AND CLARK COUNTY.

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNENW	2	17N	4W	LEWIS AND CLARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 20.00 FEET

**Surface Area:** 16.00 ACRES

**Capacity:** 128.00 ACRE-FEET

THE DAM EXTENDS INTO THE NWSNW SEC 2 TWP 17N RGE 4W LEWIS AND CLARK COUNTY.

**Period of Use:** MAY 1 TO OCTOBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	160.00		E2	2	17N	4W	LEWIS AND CLARK
<b>Total:</b>	160.00						

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

97128-00

97129-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**DEARBORN RIVER**  
**BASIN 41U**

**Water Right Number:** 41U 97131-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MARGIE A THOMPSON  
7950 BIRDTAIL RD  
WOLF CREEK, MT 59648  
  
ARTHUR D THOMPSON  
7950 BIRDTAIL RD  
WOLF CREEK, MT 59648 8602

**Priority Date:** MAY 28, 1898

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 341.09 GPM

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 5 - LOW

**Maximum Acres:** 20.00

**Source Name:** SOUTH FORK DEARBORN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	21	16N	5W	LEWIS AND CLARK

**Period of Diversion:** MAY 1 TO JULY 1

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO JULY 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00		SE	16	16N	5W	LEWIS AND CLARK

**Total:** 20.00

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

97131-00

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